

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV 2006/0958

BETWEEN:

SEAN LEWIS

Applicant

AND

1. P. C. 511 RUDOLPH PHILLIP
2. COMMISSIONER OF POLICE

Respondents

Appearances:

Mr. Jeanot – Michel Walters for Applicant

Mr. Leslie Prospere for Respondents

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2006: February 14
April 4
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DECISION

- [1] **MASON J.:** On Wednesday 6th December 2006, the Applicant was arrested by the Police and detained at the Central Police Station for his alleged involvement in certain incidents. While at the Police Station he was questioned but never charged for any offence.

- [2] On 12th December 2006 the Applicant applied to the Court for a writ of Habeas Corpus to secure his release from custody.
- [3] Consequent upon an order of the Court made on the said 12th December 2006 that a writ of Habeas Corpus be issued in respect of the Applicant, the matter came on for hearing on 14th February 2007, at which time the Respondents accepted that the Applicant had been unlawfully detained. The sole issue left for determination by the court was damages.
- [4] In his Affidavit, the Applicant states that while at Central Police Station he was repeatedly questioned by Police, he was forced to use unsanitary washroom facilities, he was fed only rations (bread, water and or tea), he was kept in a crowded holding cell with persons who had been remanded on charges of murder and as a result he was terrified and concerned about his personal safety. The Applicant also states that he felt humiliated and disgraced and that having been away from his work as a draftsman for several days, he suffered loss and is therefore seeking damages for his unlawful detention.
- [5] There were two (2) Affidavits in response: One by the Honourable Attorney General who deposes that he acquired his information and knowledge regarding the matter from Mr. Vernon Francois, Assistant Commissioner of Police who was the other deponent and who in turn acquired his information and knowledge from other Police Officers.
- [6] The Affidavit revealed that on 6th December 2006 the Applicant and two other persons were arrested by the Police for their alleged involvement in two (2) separate incidents on 28th November 2006.

- [7] The first incident related to the robbery of a firearm belonging to a police officer on the said 28th November and the second incident to a shooting on the said day and involving the use of that firearm.
- [8] The Applicant and the other persons were detained at the Central Police Station and questioned the following morning about their alleged involvement in these incidents. In the course of interrogations, the Applicant, although denying involvement in any of the incidents admitted his knowledge of the whereabouts of the stolen firearm but was only prepared to disclose this knowledge on condition that no charges would be preferred against him on any of the others.
- [9] In the meantime, the police became aware of the existence of an unexecuted warrant of arrest dated 21st April 1995 in relation to the Applicant. This warrant was for a charge of a murder committed in October 1994 but the warrant could not be executed because the Applicant had left the jurisdiction for the United States of America from which he had only recently been deported for his involvement in an attempted murder.
- [10] Mr. Francois further states that the police being cognizant of the legal prohibition against the police executing a copy of an arrest warrant, became distracted by the search for the original of the arrest warrant and failed to seek an extension for the Applicant's detention. He states, that while detained, however, the Applicant was treated in a similar manner to all prisoners in that he was fed three times daily, allowed access to visitors and a solicitor and granted access to available sleeping, toilet and bathroom facilities.

Submissions

- [11] Counsel for the Applicant argues that the actions of the Respondents constituted a breach of the Applicant's constitutional rights, that section 16 of the Constitution allows for a redress within the court's discretion and that whatever damages are awarded should reflect a vindication of the breach of the Applicant's constitutional rights.
- [12] Counsel encouraged the Court to give what is referred to as an "additional award", in the case of The Attorney General of Trinidad and Tobago v Siewchand Ramanoop (and which Counsel appeared to equate with an award of exemplary damages).
- [13] Counsel suggests that there does not seem to be much guidance given by the Courts as to the level of award to which this Applicant would be entitled and referred the Court to the local unreported case of Leonard Ogilvy v The Attorney General and Others Claim No. 261 of 2006 in which the Claimant was awarded \$1,500.00 for fourteen (14) hours of illegal detention and which was increased to \$6,000.00 by the Court of Appeal on the basis that the trial judge had miscalculated the period of detention as being fourteen (14) hours when in fact it had been 37 hours. By Counsel's calculation this was at the rate of \$163.00 per hour. He contended that the Applicant in the present case had been detained for 73 hours and that while a mathematical calculation is not to be used, the court might yet take it into account since there is no definitive guide and this is the only indication available.

- [14] In this context of the additional award, Counsel cited the Bahamian case of Tamara Merson v Drexel Cartwright and The Attorney General Privy Council Appeal No. 61 of 2003 in which Lord Scott of Foscote in delivering the judgment stated:

“....the nature of damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement”.

- [15] Counsel suggested that the Court must consider what the Applicant had to endure: being left in an overcrowded cell for three (3) days and rejected the motion that a nominal amount or a simple declaration would suffice. The State should be held accountable through a monetary award for the actions of its officers.

- [16] In reply Counsel for the Respondents submitted that the court in making an award must be cognizant of conventional awards in related areas. He referred to the Trinidadian case of Ramnarine Jorsingh v The Attorney General (1998) 52 WIR 501 in which de la Bastide CJ remarked that the Court should strive to

***“maintain some proportion with the levels of damages that have been awarded for wrongful deprivation of liberty*”**

- [17] Counsel regretted that there is very little judicial guidance for compensation under section 3 (3) of the Constitution (unlawful detention) and stated that awards have tended to be arbitrary.
- [18] He referred to the basic principles surrounding the award of damages for breaches of the fundamental rights provisions in our constitutions as observed by Lord Diplock in Maharaj v The Attorney General (1978) 30 WIR 310:

“Such compensation would include any loss of earnings consequent on the imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration”:

- [19] According to Counsel, the Privy Council did not indicate how a judge should compute that loss.
- [20] The Court was also referred to other Trinidadian cases viz Jennelyn Guerra v The Attorney General, HCA NO 1717/01 and Siewchand Ramanoop v The Attorney General, HCA NO S 0047/2001 and to miscellaneous cases from other parts of the Commonwealth for guidance on the principles which the Court might use to assess compensation.

- [21] Counsel decried the use of a strict mathematical approach in computing the time that an applicant spent unlawfully detained while admitting it is one of the other important factors to be considered in assessing damages and that the court ought to have regard to the plight and circumstances of the individual applicant in making an award: per Jennelyn Guerra (supra).
- [22] Counsel suggested that even if there is evidence that the Applicant suffered any feelings of distress and inconvenience, that these were minimal and were not inflamed by any contumelious conduct on the part of the police. One of the factors which he stated that the court should address is the gravity of the breach. While the Respondents' explanation that the Applicant had not been released because the Police were searching for the original warrant does not legalize the detention, the conduct of the police during the detention should go towards mitigating the award. The conduct of the police could not be considered nefarious.
- [23] On the issue of exemplary damages, Counsel stated that this must be specifically pleaded together with the facts on which the Applicant seeks to rely: see Halsbury's Laws of England, Volume 12, paragraph 1197 and Volume 36, paragraphs 24 and 26. Counsel submitted that even if the exemplary damages had been pleaded, no such case had been made out because there was nothing malicious or cruel on the part of the Respondents: Mc Gregor on Damages 15th edition paragraph 406.

- [24] Counsel was of the view that since the conduct of the police was not deliberate, a declaration would be sufficient to vindicate the Applicant's rights but if compensation is to be awarded, it should be fixed at \$1,500.00.

Award of Damages

- [25] The court wishes first of all to record its gratitude to Counsel for the legal authorities provided and to note that though they might not all be referenced within this decision, they were found to be quite helpful especially in light of the paucity of guidance in this area of damages.
- [26] Section 3 of the Constitution guarantees to every person the right not to be deprived of liberty except by due process of law and consequently any person who is wrongfully detained is entitled to be compensated therefor Section 3 (6).

“Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person or from any other person or authority on whose behalf that other person was acting”.

- [27] The power to award damages in cases involving the contravention of the citizen's fundamental rights and freedoms is part of the jurisdiction conferred on the High Court by Section 16 of the Constitution.

(1) If any person alleges that any of the provision of sections 2 to 15 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or,, in the case of a person who is determined, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction –

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b)

and may made such declaration and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provision of sections 2 to 15 (inclusive) of this Constitution.

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means or redress for the contravention alleged are or have been available to the person concerned under any other law.

[28] The Privy Council considered the effect of section 14 of the Trinidad and Tobago Constitution (which is almost identical to our section 16) in the case of Ramanaroop (supra) in which the victim had been severely beaten by the police and for which the victim had claimed declarations and damages, including exemplary damages. Lord Nicholls had this to say:

Their Lordships view the matter as follows, Section 14 recognizes and affirms the court's power to award remedies for contravention of chapter I rights and freedoms. This jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. The jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.

When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common

law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

- [29] As was the position in the Maharaj case (supra), the claim in the present case is not a claim in private law for damages for the tort of imprisonment under which the damages recoverable are at large. This is a claim for compensation in public law for damages for the deprivation of liberty alone and so:

“such compensation would include loss of earning consequent on the imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration”.

- [30] This statement of the law has been universally followed.
- [31] Having regard to this statement and the evidence adduced by the Applicant, I am of the opinion that our case can be confined within the parameters of those two (2) issues: loss of earnings and inconvenience and distress.
- [32] It should be noted that all of the cases cited by Counsel concerned reprehensible behaviour on the part of the Police and they considered the compensatability of tangible harms such as physical and personal injury and injury to personal property. That has not

been alleged in the present case and I therefore do not consider a discussion on those issues necessary.

Loss of Earnings

[33] The Applicant claims to be employed as a draftsman but has submitted no evidence to support this or to assist the court in determining his lost earnings and consequently the level of damages to which he would be entitled. His Counsel accepted that in the absence of figures there would be difficulty in quantifying any award.

[34] As a consequence I must accept the submission of Counsel for the Respondents that the Applicant's claim under this head must fail.

[35] In the circumstances any eventual award will not take into account loss of earning.

Inconvenience and Distress

[36] The Court is expected in all instances to exercise its judgment in light of the particular circumstances.

[37] In the present case, I accept the evidence of the Claimant that he felt stripped of his dignity, humiliated and disgraced at the circumstances of his unlawful detention. There can be no excuse that the police were pre occupied with the retrieval of the original copy of the warrant of arrest and hence the reason for the continued detention. I however need to

take into account that while the facilities under he was kept might not be considered ideal, the Applicant had been accorded access to them such as they were. In addition it was unchallenged that he did not suffer any abuse at the hands of the police officers.

- [38] In coming to a determination regarding the level of damages, I adhere to the exhortation by the Court of Appeal in the Trinidadian case of Josephine Millette v Sherman McNicholls CA No 14 of 2000 not to “adopt or approve a mathematical approach in assessing compensation in constitutional matters”. Indeed, I shall be minded:

“While maintaining a measure of consistency in (the Court’s) award (to) determine the grief and agony of the particular victim, his suffering and humiliation endured over a prolonged period, suffering and distress that he says continues to this day and translate that into dollars and cents.....”.

per Hamel – Smith JA in Crane v The Attorney General and others CA No 181/97 of Trinidad and Tobago.

- [39] The Court also has to be mindful that the Applicant had had to endure his unlawful detention for a period of three (3) days.

- [40] For inconvenience and distress, the Court makes an award of \$2,500.00.

Additional Award

- [41] Counsel for the Applicant argued for an additional award on the basis of the statement by Lord Nicholls of Birkenhead to the effect that:

“An award of compensation will go some distance towards vindicating the infringed constitutional right The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasize the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award’.

- [42] Thus while a declaration by the Court will serve to articulate the fact of the violation, in most cases more than words will be required and so I find myself in agreement with Counsel for the Applicant that a simple declaration would not be appropriate to vindicate the rights of the Applicant.

- [43] In addition, if I accept Lord Scott’s opinion in *Tamara Merson* (supra) that the nature of damages should be always vindicatory and that the purpose of a vindicatory award is not punitive but purely compensatory depending on the nature of the particular infringement and the circumstances relating to that infringement and if I accept that the infringement was not of a particular callous nature but more apathetic, then I accept that the Applicant is entitled to that additional sum. This sum is awarded as suggested by Lord Nicholls in

Ramaroop to reflect the sense of public outrage, and to help to deter further breaches, And like Lord Nicholls the term "exemplary damages" is being avoided for the reason submitted by Counsel for the Respondent, the Applicant is not entitled to exemplary damages, having not so specifically pleaded.

[44] I am prepared in the circumstances to make an additional award of \$500.00.

Conclusion

[45] While the constabulary through the Affidavit of Assistant Commissioner Francois has sought to give assurance that similar events will not recur, I consider it necessary to articulate the Court's displeasure of and aversion to this seemingly frequent occurrence where members of the public ignorant of their rights are apprehended by the Police and detained for inordinately and unnecessarily long periods.

[46] The Police are by law entitled to detain a suspect in custody without charge no longer than 72 hours. If through incompetence, negligence or some other failing a charge cannot be preferred against the suspect within that time, then the Police are obligated either to seek the assistance of the Court in extending the period of detention or to release the suspect. There can be no argument or excuse for the abrogation of a citizen's fundamental rights and the Courts will never permit it.

[47] Having said that I am however satisfied that given the nature of this particular infringement of the Applicant's rights and the circumstances relating to it, it there can be no justification for an award of substantial damages.

[48] Having regard to the foregoing, the award of damages to the Applicant is \$3,000.00 - \$2,500.00 for inconvenience and distress and \$500.00 as an additional award.

ORDER

Damages to the Applicant in the sum of \$3,000.00

Costs to the Applicant in the sum of \$1,200.00



SANDRA MASON Q. C.

High Court Judge